

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIRBY J. HARDY, III and U.S. POSTAL SERVICE,  
POST OFFICE, Kinston, N.C.

*Docket No. 95-2617; Submitted on the Record;  
Issued August 7, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

In this case, appellant filed a claim alleging that he developed an emotional condition due to factors of his federal employment. The Office of Workers' Compensation Programs denied appellant's claim on May 5, 1994. Appellant requested an oral hearing and by decision dated March 6, 1995, finalized March 9, 1995, the hearing representative denied his claim finding that appellant had not established any compensable factors of employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.<sup>1</sup>

Appellant attributed his emotional condition to the fact that the employing establishment moved his workstation into the middle of the work floor and submitted witness statements supporting this allegation. The Board finds that the location of appellant's workstation is an administrative or personnel matter decided by the employing establishment. As a general rule,

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>2</sup> Appellant did not submit any evidence establishing that the locale of his workstation constituted error or abuse on the part of the employing establishment.

Appellant also alleged that he was denied auxiliary assistance. This is also an administrative or personnel matter. Supervisor Bobby Whitfield indicated on December 17, 1992 he denied appellant's request for auxiliary assistance. Appellant did not submit any evidence that this denial constituted error or abuse on the part of the employing establishment.

Appellant alleged that his route was inspected and that he was observed. The Board finds that this does not constitute a compensable factor of employment. Route inspections are related to the performance of an administrative function of the employer and are not compensable factors of employment unless there is affirmative evidence that the employer either erred or acted abusively.<sup>3</sup> Appellant also failed to submit any evidence establishing that the number of supervisors observing him casing his route was error or abuse.

The employing establishment indicated that appellant's route was counted on June 30, 1993, however, appellant's supervisor, John B. Weigele, stated that appellant requested sick leave prior to the inspection of appellant's route. The record contains a group grievance indicating that all inspections in June, July and August 1993 were null and void. As appellant was not inspected during that period there is no evidence of error or abuse on the part of the employing establishment.

Appellant also attributed his emotional condition to several letters of warning. There is no evidence that the employing establishment erred in serving the letters or in later reducing the punishment.<sup>4</sup>

Appellant alleged harassment and discrimination through the above-mentioned actions of the employing establishment. For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative

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<sup>2</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>3</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

<sup>4</sup> The record indicates that this inspection resulted in the March 22, 1991 letter of warning for failure to make reasonable effort.

and reliable evidence.<sup>5</sup> In this case, appellant has submitted evidence establishing a factual basis for his claim of harassment.

Appellant's route was inspected in 1991 and he alleged that the employing establishment withheld circulars at this time.<sup>6</sup> Appellant submitted statements by coworkers noting that on one occasion appellant's route was counted and that all the other routes had circulars that day except for appellant's. The coworkers stated that appellant's route received the circulars the following day.

As appellant has established a compensable factor of employment, that the employing establishment withheld mail in violation of written agreements,<sup>7</sup> the issue is whether there is sufficient medical evidence to establish that appellant's emotional condition was due to this accepted factor of employment.

In support of his claim, appellant submitted a report dated July 7, 1993 from Dr. Raymond N. Miller, a psychiatrist, stating that appellant's "previous emotional difficulties" had resolved and that appellant felt he could return to work. This report is not sufficient to meet appellant's burden of proof as Dr. Miller did not provide a diagnosis of appellant's emotional condition and did not provide an opinion on the causal relationship between appellant's diagnosed condition and his accepted factor of employment.

The Office requested additional medical information from appellant on February 4, 1994. Appellant submitted a letter dated November 2, 1994 from Chris Boyle, a psychologist,<sup>8</sup> noting the specific stressors that appellant reported including increased mechanization of the employing establishment, the rigid and nitpicky environment and mistreatment by supervisors. Mr. Boyle is not a physician for the purposes of the Federal Employees' Compensation Act and his report does not constitute medical evidence sufficient to establish appellant's claim.<sup>9</sup>

As appellant has submitted no medical evidence establishing a causal relationship between his emotional condition and accepted factor of employment, he has failed to meet his burden of proof and the Office properly denied his claim.

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<sup>5</sup> The record indicates that this inspection resulted in the March 22, 1991 letter of warning for failure to make reasonable effort.

<sup>6</sup> The record indicates that this inspection resulted in the March 22, 1991 letter of warning for failure to make reasonable effort.

<sup>7</sup> Appellant's representative submitted documentation following the oral hearing (prior to the hearing representative's decision) that mail not be curtailed during the week of count and inspection.

<sup>8</sup> Mr. Boyle does not indicate that he is a clinical psychologist and his signature describes a Masters in Psychology.

<sup>9</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

The decision dated March 6, 1995 and finalized March 9, 1995 of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
August 7, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member